

**DELAWARE STATE HOUSING AUTHORITY
TAX CREDIT EXCHANGE
APPLICATION PROCESS**

The American Recovery and Reinvestment Act (ARRA) of 2009, PL 111-5, signed into law on February 17, 2009, gives housing credit agencies the ability to exchange certain allocations for cash from the Treasury (Exchange) to facilitate the production of projects awarded low-income housing tax credits in “fiscal years” 2007, 2008 and 2009 but could not go forward because they could not obtain equity.

Delaware State Housing Authority (DSHA) is the housing credit agency for the State of Delaware that administers the Low Income Housing Tax Credit (LIHTC). DSHA will administer the state’s Exchange pursuant to the process and exchange Criteria listed below.

I. INTRODUCTION

DSHA will follow ARRA’s overall purpose of creating and saving jobs in the near term by using the Exchange funds to start construction on shovel-ready projects.

The Exchange criteria are subject to revision based on changed circumstances, such as clarifications from Treasury or amendments from federal agencies. DSHA will announce and post any program changes as they are made.

Terms used in the Exchange criteria will have the same meaning as under IRS Code Section 42, federal regulations, DSHA’s Qualified Allocation Plan, Treasury’s “Grantee Terms and Conditions”, and legal agreements between DSHA and Owners.

II. EVALUATION CRITERIA

A. THRESHOLD ELIGIBILITY

1. The project must have an award of 9% tax credits from 2007, 2008 or 2009 and the Applicant must have either an equity investment or made good faith efforts to obtain an equity investment for eligible projects. For purposes of the Exchange criteria, “award” means an executed DSHA Reservation Letter or Carryover Agreement and the project has been an approved ranked property.
2. The project and Applicant must be eligible under applicable federal requirements.
3. The project complies with the terms of its Carryover Allocation Agreement or Reservation Letter and the Owner has made no material changes without DSHA’s prior approval after the final accepted LIHTC application.
4. Applicants must be able to expend one hundred percent (100%) of the Exchange award before December 31, 2010 and place projects in service by December 31, 2011. In determining whether Applicants will be able to meet this requirement, DSHA will consider:
 - The anticipated building timelines, including any challenges (e.g. extensive sitework), and
 - Applicant’s and general contractor’s recent history of timely construction.
5. Applicants must complete an Exchange Application.

6. Projects that receive Exchange funds must execute a legally binding grant agreement with DSHA which will be recorded as a restriction that is binding on all Owners, successors, and assigns. The grant agreement will require the Owner to agree to all Section 42 provisions under the Code. The grant agreement will include recapture provisions including a requirement providing for recapture to assure that the building remains a qualified low-income building during the 15-year compliance period. In addition, the grant agreement will include provisions that indicate any recapture becomes a debt owed to the United States payable to the General Fund of the Treasury and enforceable by all available means against any assets of the Applicant. DSHA's binding grant agreement will include typical LIHTC partnership requirements including, but will not be limited to, penalties, reserves, priority of distributions, guarantees, replacement of partners and the required Federal regulations.

B. APPLICATION PROCESS

1. Applicants must submit a DSHA Exchange Application within 60 days of the initial approval for Exchange funds from Treasury. DSHA may at their discretion, approve Exchange Applications, at other such periods as DSHA determines. Pre-2009 Allocations will have priority over all other applications.
2. Eligible Exchange properties that have received an award of tax credits and are under construction and at risk of not being completed due to investor/equity fallout will be given second priority.
3. Eligible Exchange properties that have received an award of tax credits and are "shovel-ready" and have an investor that has agreed to an allocation of credits will be given third priority. Projects that are considered "shovel ready" to start construction are defined as projects that have completed all or the majority of the following:
 - Completed federal requirements, including the environmental review clearance and other cross cutting requirements, if applicable;
 - Has final construction drawings and plans and specifications;
 - Has solicited three bids for the construction work;
 - Received building permits or letters from the local jurisdiction stating the project has been approved for a building permit;
 - Executed a construction contract, secured construction financing and have set a construction closing date.
4. Eligible Exchange properties that have received an award of tax credits and are "shovel-ready" but have no investors will be given fourth priority. The Applicant must demonstrate good faith efforts to obtain investment commitments. Three letters from syndicators/investors turning down investment offers must accompany the Exchange application. DSHA may consult with equity providers to verify this requirement.
5. Tax Exempt Bond Properties that have received an award of tax credits, but have no investors or are at risk of not being completed due to investor/equity fallout will be given last priority.

III. GENERAL REQUIREMENTS AND CRITERIA

In addition to the terms of the Exchange Criteria, Applicants will comply with the Qualified Allocation Plan (QAP) and any DSHA requirements applicable to the project's final LIHTC accepted application.

A. UNDERWRITING STANDARDS

In addition to the underwriting requirements below, DSHA reserves the right to revise the underwriting standards as federal program guidance is released or at DSHA's discretion. DSHA will reserve the right to perform new underwriting of prior approved LIHTC applications to confirm financial feasibility.

1. Exchange contributions will be approximately equal to the anticipated equity in the project's final accepted LIHTC application, unless otherwise approved by DSHA. In all cases the award and contribution amounts will be no more than the lesser of:
 - (a) The project's eligible basis (as of the cost certification date), and/or
 - (b) What is necessary to ensure the project's financial feasibility and viability for thirty (30) years based on DSHA's IRS Code Section 42(m)(2) analysis.
2. Exchange contributions will be for a thirty (30) year terms with no interest or payments.
3. Exchange Projects must comply with all DSHA rules, policies, requirements and underwriting criteria regardless of financing sources.
4. Owners must record a thirty (30) year Declaration of Land Use Restrictive Covenants (Declaration) pursuant to DSHA's QAP.
5. Owners must agree that at the end of the (15) year term or at any time during the initial compliance period owner may not sell, transfer or exchange any portion of a building during the term of the Declaration Agreement, unless all of the buildings are sold, transferred or exchanged to a qualified entity as approved by DSHA. The project must remain low income for the remaining 30-year term.
6. Owners will need to provide updated commitment letters from all permanent funding sources (other than equity).

B. POST-AWARD AND CONTRIBUTION TERMS

1. DSHA's Exchange Agreements/Commitments will specify construction schedules and deadlines and all DSHA, rules and regulations. Owners will have until November 1, 2010 to submit draws to disburse Exchange funds. (This date may change based on federal disbursement practices.)
2. Owners will be responsible for securing sources to cover any part of the Exchange contribution amount not expended by December 31, 2010; otherwise DSHA may:
 - Rescind other funding commitments, such as HDF or HOME loans, and/or
 - Initiate foreclosure proceedings to recapture Exchange contributions.
3. All Construction loans must allow for future advances and principal payments from Exchange funds during the construction period.

4. Remedies for default on the Exchange Contribution Agreement or other noncompliance may include DSHA having the ability to do, but not limited to, some or all of the following:
 - Declare participants not in good standing for all future DSHA programs,
 - Change the structure of the ownership entity, including adding or removing members/partners,
 - Replace the management company,
 - Recapture as authorized under federal policies, and
 - Other remedies as determined by DSHA, such as posting of a Letter of Credit.
5. Owners must return the agreed upon tax credit allocation per a formal letter to DSHA by a date determined by DSHA.
6. Projects that have not gone to construction closing will be charged an Asset Management fee specifically for DSHA to perform asset management functions and assure compliance with Section 42 of the IRC for the LIHTC program. Asset Management fees may not be paid from Exchange funds. The fee will be \$500 per unit and 1% of the amount of the reserved and/or allocated annual credits (either returned or exchanged) multiplied by 10.

C. REPORTING AND COMPLIANCE

1. Owners will report quarterly (calendar year) to DSHA on:
 - Name of recipient entity
 - Name of project
 - Brief description of project
 - Location of project: city/county, State, zip code
 - Number of construction jobs created
 - Number of construction jobs retained
 - Number of non-construction jobs created
 - Number of non-construction jobs retained
 - Number of total housing units newly constructed
 - Number of total housing units rehabilitated
 - Number of low-income housing units newly constructed
 - Number of low-income housing units rehabilitated
 - Project's completion status
 - Any other information necessary for DSHA's federal reporting requirements
2. Owners will follow DSHA's processes, procedures and requirements applicable to IRS Code Section 42 projects and any additional compliance requirements made necessary due to Exchange funding.
3. Owners will allow DSHA to perform asset management functions so as to ensure compliance with Section 42 of the IRS Code and the regulations thereunder (including Title 26 Code of Federal Regulations Section 1.42.9) for long-term viability of the buildings funded by an Exchange award in accordance with Section 1602(c)(3) of ARRA.

D. RECOVERY ACT ACCOUNTABILITY AND TRANSPARENCY REQUIREMENTS:

1. DSHA will publish its Exchange requirements and process on DSHA's website http://www.destatehousing.com/services/dv_tcap.shtml and will send all Exchange information to DSHA's List Serve Interested Parties of the LIHTC program in Delaware. DSHA will make the Exchange requirements process available to the public and accept comments for a five-day comment period. The Exchange award projects/recipients and funding amounts will be posted on the website. All quarterly reports will be posted to this website for review of the public.
2. DSHA will remain in compliance with the accountability and transparency requirements for the duration of the Exchange grants by posting information to the website for review of the public as needed. All Exchange applications, policies and procedures are available for review by the public.

12/7/2009